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*Attorneys for Defendants Wells Fargo Bank N.A., also named as Wells Fargo Home Mortgage, Inc. and Wells Fargo Asset Securities Corp., (collectively "Wells Fargo Bank, N.A."); and MERSCORP, Inc., and Mortgage Electronic Registration Systems, Inc.*

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KAMAL P. LALWANI, SANCHI K.  
LALWANI individuals,

Plaintiffs,

vs.

NEVADA ASSOCIATION SERVICES,  
INC.; ALIANTE MASTER  
ASSOCIATION; WELLS FARGO BANK  
N.A.; WELLS FARGO HOME  
MORTGAGE, INC; WELLS FARGO  
ASSET SEC. CORP.; NATIONAL  
DEFAULT SERVICING CORP.; an  
Arizona Corporation; HSBC BANK USA,  
N.A. MERSCORP, INC, a Virginia  
Corporation, MORTGAGE ELECT. REG  
SYS., INC. a subsidiary of MERSCORP,  
Inc., a Delaware corporation; AND DOES I  
individuals 1 to 100 Inclusive; and ROES  
Corporations 1 to 30, inclusive; and all  
other persons and entities unknown  
claiming any right, title, estate, lien or  
interest in the real property described in the  
Complaint adverse to Plaintiff's ownership,  
or any cloud upon Plaintiff's title thereto,

Defendants.

NO. 2:11-cv-00084-KJD-PAL

**DEFENDANTS MERSCORP, INC. AND  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.'S  
MOTION TO DISMISS**

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**DEFENDANT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.'S  
MOTION TO DISMISS**

Defendants MERSCORP, Inc. and Mortgage Electronic Registration System, Inc. (collectively "MERS"), by and through its counsel, the law firm of Snell & Wilmer LLP, move this Court to dismiss the claims of Plaintiffs Kamal P. Lalwani and Sanchi K. Lalwani ("Plaintiffs") with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

This Motion to Dismiss Plaintiffs' First Amended Complaint is based on the Memorandum of Points and Authorities herein, all papers on file with this Court, any documents incorporated by reference or attached to the Amended Complaint, the exhibits attached to the Request for Judicial Notice filed concurrently with this Motion, and any oral argument that this Court may entertain.

Dated: January 15, 2011.

SNELL & WILMER LLP.

By: 

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

Plaintiffs have named MERS as a defendant in this action. However, MERS had absolutely no involvement with the property complained of, including the loan Plaintiffs obtained to purchase the property, nor any involvement with the subsequent assignments of the beneficial

1 interest under the subject deed of trust. Plaintiffs' Amended Complaint and the allegations  
 2 therein, appear to be simply copied from another source, and carelessly advanced in this matter.  
 3 MERS has been wrongfully included in Plaintiffs' shotgun pleading and its rambling mess of  
 4 scandalous accusations.

## 5 II.

### 6 FACTUAL BACKGROUND

7 Plaintiffs came into ownership of the real property located at 2020 Barhill Avenue, North  
 8 Las Vegas, Nevada, 89084, APN: 124-20-613-011 (the "Property"), as husband and wife as joint  
 9 tenants with right of survivorship, on or about March 5, 2007, by way of a "Corporation Grant,  
 10 Bargain and Sale Deed" executed by Pardee Homes of Nevada. *See* Corporation Grant, Bargain  
 11 and Sale Deed attached as Exhibit 1 to the Request for Judicial Notice ("RJN") filed concurrently  
 12 herewith. Plaintiffs obtained a loan in the amount of \$459,376.00, secured by a deed of trust on  
 13 the Property.<sup>1</sup> The Deed of Trust was subsequently transferred from Linear Financial to  
 14 Defendant Wells Fargo on February 28, 2008 by way of assignment recorded March 26, 2008.  
 15 *See* Assignment of Deed of Trust ("Assignment") attached as Exhibit 3 to the RJN. The  
 16 following language on the first page of the Assignment clarifies that it is "granted, assigned, and  
 17 transferred" to Wells Fargo "TOGETHER with the note or notes therein described or referred to,  
 18 the money due and to become due thereon with interest, and all right accrued or to accrue under  
 19 said Mortgage/Deed of Trust." *Id.*

20 On September 8, 2009, the first Notice of Default was recorded against the Property,  
 21 citing default on the Deed of Trust executed by Plaintiffs. *See* Notice of Default and Election to  
 22 Sell, attached as Exhibit 4 to the RJN. Plaintiffs were behind in their obligations in the amount of  
 23 \$21,333.14. National Default Servicing Corporation filed the notice of default on behalf of, and  
 24 as agent for, Wells Fargo Bank, N.A., the assigned Beneficiary under the March 5, 2007 Deed of  
 25 Trust. *Id.* at pg. 2.

26 A Corporation Assignment of Deed of Trust was recorded on March 22, 2010, whereby

27 <sup>1</sup> A loan in the amount of \$459,376 was obtained from Linear Financial, LP, DBA Pardee Home  
 28 Loans as evidenced by the March 15, 2007 deed of trust, which is attached as Exhibit 2 to the  
 RJN.

Wells Fargo Bank, N.A., through its agent National Default Servicing Corporation, granted, assigned, and transferred to HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-7 (“HSBC Bank USA”), all beneficial interest under the March 5, 2007 Deed of Trust. *See* Corporation Assignment of Deed of Trust, attached as Exhibit 5 to the RJN. That same day, a Substitution of Trustee was recorded, substituting National Default Servicing Corporation as Trustee under the March 5, 2007 Deed of Trust. *See* Substitution of Trustee, attached hereto as Exhibit 6 to the RJN.

On March 22, 2010, a Notice of Trustee’s Sale was recorded, setting a foreclosure sale date of April 7, 2010. *See* Notice of Trustee’s Sale, attached as Exhibit 7 to the RJN. This sale would not go forward however, and a second Notice of Trustee’s Sale was recorded on October 12, 2010, setting a sale date for November 3, 2010. *See* Notice of Trustee’s Sale, attached as Exhibit 8 to the RJN. On November 2, 2010, the day before the foreclosure sale was to be held, Plaintiffs filed a Notice of Lis Pendens. *See* Notice of Lis Pendens, attached as Exhibit 9 to the RJN. An Amended Notice of Lis Pendens was filed on December 3, 2010, reflecting the addition of new defendants in the caption. On January 5, 2011, HSBC Bank USA purchased the Property at a trustee’s sale. *See* Trustee’s Deed Upon Sale, attached as Exhibit 10 to the RJN.

### III.

#### LEGAL ANALYSIS

##### A. Motion to Dismiss Standard Under FRCP 12(b)(6)

When testing a motion to dismiss for failure to state a claim, conclusions of law or unwarranted deductions of fact are not assumed to be true. *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). “[A] plaintiff’s obligation to provide the grounds of his entitlement for relief requires more than labels and conclusions, and a formulaic recitation of the elements of the cause of action will not do.” *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555-57 (2007). To avoid dismissal, the allegations must sufficiently cross the line from merely “conceivable” to a level “plausibly suggesting” that the plaintiff is entitled to relief. *Id.*; *see also*, *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1947-49 (2008). Courts will not assume the plaintiff can prove facts not alleged



1 in the complaint. *See Jack Russell Terrier Network of N. Cal. v. Am. Kennel Club, Inc.*, 407 F.3d  
2 1027, 1035 (9th Cir. 2005).

3 When materials are attached to or incorporated by reference in the complaint, or are  
4 matters of judicial notice, the motion need not be converted into one for summary judgment.<sup>2</sup>  
5 *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). A document is incorporated by  
6 reference if the document is attached to the complaint, referred to extensively in the complaint, or  
7 forms the basis of plaintiffs' claim. *Id.*

8 Here, the factual allegations do not raise Plaintiffs' right to relief above the "conceivable"  
9 level because the recorded documents, of which the court may take judicial notice and which are  
10 incorporated into Plaintiffs' Amended Complaint, evidence that MERS played no role in  
11 Plaintiffs' loan or foreclosure. Accordingly, Plaintiffs have not presented any basis to impose  
12 liability upon MERS.

13 **B. Plaintiffs' Amended Complaint and All Causes of Action Advanced Therein, Must**  
14 **be Dismissed as to Defendant MERS since MERS had No Involvement in this Matter**

15 Plaintiffs cannot state any valid claims against MERS because MERS was not involved in  
16 the loans or foreclosure process. Contrary to Plaintiffs' allegations that MERS was involved in a  
17 grand conspiracy to harm Plaintiffs, a review of the recorded Deed of Trust, and subsequent  
18 recorded assignments of the beneficial interest therein, reveal that MERS played no part at all.  
19 Plaintiffs' pleading is likely a form complaint that was copied from another source.

20 MERS had absolutely no involvement with Plaintiffs' Property nor any of the subsequent  
21 assignments of the Deed of Trust. A review of the recorded documents for the subject property  
22 clearly proves this, and MERS is nowhere to be found. Linal Financial, as lender, was the  
23 original beneficiary under the subject Deed of Trust. *See Exhibit 2 to the RJN. United Title of*

24 <sup>2</sup> This Court may consider the Note and Deed of Trust, and other loan origination documents  
25 without converting this Motion into one for summary judgment because the documents are central  
26 to the allegations in the Amended Complaint. *See, e.g., Townsend v. Columbia Operations*, 667  
27 F.2d 844, 848-49 (9th Cir. 1982); *Cumis Ins. Soc., Inc. v. Merrick Bank Corp.*, No. CV-07-374-  
28 TUC-CKJ, 2008 WL 4277877, at \*9-10 (D. Ariz. 2008)(a contract that is central to a party's  
complaint is not a matter outside the pleadings and is properly considered in deciding a 12(b)(6)  
motion). In addition, the Court may consider the Deed of Trust and other documents because  
they are publicly recorded. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001).

Nevada was the trustee. *Id.* On February 28, 2008, Linear Financial “granted, assigned, and transferred” the Deed of Trust to Wells Fargo Bank, N.A. *See* Exhibit 3 to the RJN. Wells Fargo thereby became the new beneficiary by assignment. Wells Fargo then assigned the Deed of Trust to HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-7, which became the new beneficiary. *See* Exhibit 5 to the RJN. National Default Servicing Corporation was substituted as the new Trustee on December 9, 2009, replacing United Title of Nevada. *See* Exhibit 6 to the RJN. Most recently, HSBC Bank USA purchased the subject property at the January 5, 2011 trustee’s sale. *See* Exhibit 10 to the RJN.

#### IV.

#### CONCLUSION

Because none of the claims could plausibly apply to MERS, which was not involved in Plaintiffs’ loan or foreclosure, MERS respectfully requests that this case be dismissed with prejudice as against MERS.

Dated: January 25, 2010.

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**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing by the method indicated:

  X   U. S. Mail  
       U.S. Certified Mail  
       Facsimile Transmission  
       Federal Express  
       Electronic Service via CM/ECF

and addressed to the following:

Kamal P. Lalwani  
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Plaintiffs Pro Se

DATED this 25<sup>th</sup> day of January, 2011

  
An employee of Snell & Wilmer L.L.P.

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